

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Georgia Latino Alliance for Human
Rights; and American Civil Liberties
Union Foundation of Georgia,

Plaintiffs,

v.

United States Department of Homeland
Security; and Immigration and Customs
Enforcement,

Defendants.

Civil Action File No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

PRELIMINARY STATEMENT

1. This is an action under the Freedom of Information Act (“FOIA”) to compel the disclosure of agency records improperly withheld from Plaintiffs Georgia Latino Alliance for Human Rights and the American Civil Liberties Union Foundation of Georgia, by Defendants United States Department of Homeland

Security (“DHS”) and its component, Immigration and Customs Enforcement (“ICE”).

2. Plaintiffs bring this action to obtain undisclosed government records regarding an issue of significant and growing public concern: Georgia’s ever-deepening involvement in immigration enforcement. In the last five years, local and state law enforcement agencies in Georgia have formally engaged in immigration enforcement efforts through three main sets of initiatives: statewide immigration legislation, the federal “Secure Communities” program, and “287(g)” agreements between Georgia counties and the federal government. The implementation of each of these initiatives, explained in greater detail below, has been accompanied by increasingly frequent reports of racial profiling and other discriminatory practices.

3. While it is clear what laws and programs facilitate state and local cooperation in federal immigration enforcement, the public’s understanding of the impact of this cooperation is limited. The interests in protecting Georgians against discrimination and in evaluating the state’s significant immigration-related expenditures give the public a right to know how Georgia’s involvement in immigration enforcements affects its residents.

4. This action will vindicate this right. FOIA requires the federal government to disclose records in its possession unless they fall into one of a limited number of exemptions in the statute. Its “central purpose is to ensure that the Government’s activities be opened to the sharp eye of public scrutiny.” *Dep’t of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 744 (1989) (emphasis omitted). To obtain documents, an individual or organization simply files a request with a specific government agency and includes a description of the requested materials that enables the agency to locate them. FOIA and related regulations provide for a fee waiver and expedited processing in order to facilitate the dissemination of information of significant public concern.

5. The records Plaintiffs seek would contribute to a much greater understanding of the growing collaboration between federal immigration officials and Georgia law enforcement. Specifically, the records will reveal the immigration-related practices of state and local police and help clarify the extent to which these practices may involve racial profiling and the improper detention or deportation of U.S. citizens and parents of U.S. citizens. The withholding of such information is contrary to FOIA’s disclosure requirements and only serves to stymie informed public scrutiny of federal and state immigration programs.

JURISDICTION AND VENUE

6. This court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1346(a)(2).

7. Venue lies in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1391(e) and 1402(a).

PARTIES

8. Plaintiff Georgia Latino Alliance for Human Rights (GLAHR) is a statewide organization that was created to educate and organize Latinos in their own communities regarding laws and customs with the purpose of obtaining community participation in the defense of their civil rights, and to empower low-income Latinos without regard to their immigration status. GLAHR operates a radio station heard throughout the Metro Atlanta area and produces daily radio programs broadcasting news to the public at large. GLAHR disseminates information online by way of the GLAHR website, www.glahr.org. GLAHR's principal place of business is Atlanta, Georgia.

9. Plaintiff American Civil Liberties Union Foundation of Georgia (ACLU of Georgia) is the Georgia affiliate of the national ACLU. Its mission is to advance the cause of civil liberties in Georgia, with emphasis on the rights of free speech,

free press, free assembly, freedom of religion, and due process of law, and to take all legitimate action in the furtherance of such purposes without political partisanship. The ACLU of Georgia regularly publishes information and analysis about government activity, including immigration enforcement, to the public. These publications take the form of books, reports, “Know Your Rights” materials, fact sheets, and online articles. The ACLU of Georgia’s principal place of business is Atlanta, Georgia.

10. Defendant DHS is an agency of the United States within the meaning of 5 U.S.C. § 552(f)(1). DHS has possession of, and control over, the information sought by Plaintiffs under the FOIA.

11. Defendant ICE is a component agency of DHS and is an agency of the United States within the meaning of 5 U.S.C. § 552(f)(1). ICE has possession of, and control over, the information sought by Plaintiffs under the FOIA.

STATEMENT OF FACTS

Georgia’s Deepening Involvement in Immigration Enforcement

12. Over the past five years, Georgia law enforcement officials have become involved in immigration enforcement efforts to an unprecedented degree. In 2012,

however, this cooperation took a new form, with the entire state subject to both federal and state laws and policies demanding local participation in immigration enforcement. Despite this extraordinary shift in immigration enforcement in Georgia, there is little public information available to evaluate the civil rights implications of this transformation. The information requested here can meet this fundamental need.

13. To date, five jurisdictions in Georgia have signed “287(g)” agreements pursuant to a provision of federal law under which local officers may perform certain functions of federal immigration officials. *See* Immigration and Nationality Act § 287(g), 8 U.S.C. § 1357(g). The five jurisdictions include the counties of Cobb, Hall, Gwinnett, and Whitfield and the Georgia Department of Public Safety. Immigration and Customs Enforcement, *FOIA Library*, <http://www.ice.gov/foia/library/> (last visited Sept. 26, 2012). The Georgia 287(g) jurisdictions removed nearly 14,831 individuals between October 2006 and April 2012 through the program, the fifth highest number in the nation. *See* Jeremy Redmon, *Georgia Highly Active in Deportations*, *The Atlanta Journal Constitution* (Apr. 8, 2012), <http://www.ajc.com/news/news/local/georgia-highly-active-in-deportations/nQSrk/>.

14. As of December 2011, the entire state of Georgia has been activated in the “Secure Communities” program, through which participating jails run immigration checks on any individual booked into jail. *See* Immigration Policy Center, *Secure Communities: A Fact Sheet*, <http://www.immigrationpolicy.org/just-facts/secure-communities-fact-sheet> (last visited Sept. 26, 2012). Since Georgia’s initial Secure Communities activation on November 17, 2009, there have been over 748,224 submissions, resulting in 6,754 removals and returns. Immigration and Customs Enforcement, *Secure Communities Monthly Statistics through July 31, 2012*, at 4 (2012), *available at* http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2012-to-date.pdf.

15. On May 13, 2011, Georgia Governor Nathan Deal signed into law HB 87, which directs state and local law enforcement officials to conduct routine immigration status investigations and generally makes the enforcement of federal civil immigration law a matter of primary concern for state and local police. The U.S. District Court for the Northern District of Georgia preliminary enjoined some sections of HB 87 as a result of a lawsuit brought by GLAHR and other plaintiffs, with the ACLU and other organizations serving as counsel. *See GLAHR v. Deal*, 793 F. Supp. 2d 1317, 1340 (N.D. Ga. June 27, 2011). On appeal, the Court of Appeals for the Eleventh Circuit acknowledged the plaintiffs’ concerns related to

potential discriminatory enforcement of HB 87. *Georgia Latino Alliance for Human Rights v. Georgia*, 691 F.3d 1250, 1268 n.12 (11th Cir. Aug. 20, 2012).

The court made clear that although it could not preemptively strike down the law based on the presumption that Georgia would violate its own law,

“unconstitutional application of the statute could be challenged in later litigation.”

Id; see also *Arizona v. United States*, 132 S. Ct. 2492, 2510 (2012). The court did lift the injunction on the “show me your papers” provision of HB 87, which allows Georgia law enforcement to investigate the immigration status of individuals stopped or arrested, stoking fears of racial profiling in immigrant communities. See Michael Winter, *Appeals court allows Ga police to check immigration status*, USA Today (Aug 20, 2012), <http://content.usatoday.com/communities/ondeadline/post/2012/08/appeals-court-allows-ga-police-to-check-immigration-status/1#>.

UGz6hRg-KWw; Jeremy Redmon, *Alabama’s ‘show me your papers’ law: a cautionary take for Georgia*, The Atlanta Journal Constitution (Aug. 20, 2012), <http://www.ajc.com/news/news/alabamas-show-me-your-papers-law-a-cautionary-tale/nSCXw/>.

Rising Concerns of Racial Profiling and Other Police Misconduct

16. The confluence of HB 87, Secure Communities, and 287(g) has led to increased reports of racial profiling and other disturbing constitutional and civil

rights violations in Georgia. *See, e.g.,* ACLU of Georgia, *The Persistence of Racial Profiling in Gwinnett: Time for Accountability, Transparency, and an End to 287(g)* (March 2010), available at http://www.acluga.org/download_file/view_inline/1504/392/; Editorial, *Setback for Rogue Immigration Laws*, New York Times (Aug. 21, 2012), <http://www.nytimes.com/2012/08/22/opinion/setback-for-rogue-immigration-laws-in-georgia-and-alabama.html>; Chris Sweigart, *'Secure Communities' Rolls out in Cobb, Fulton Counties* (Sept. 7, 2010), <http://www.11alive.com/news/local/story.aspx?storyid=153063>.

17. Based upon individual accounts, police routinely subject Latinos to traffic stops for unknown reasons. *See* ACLU of Georgia, *The Persistence of Racial Profiling in Gwinnett: Time for Accountability, Transparency, and an End to 287(g)* (March 2010), available at http://www.acluga.org/download_file/view_inline/1504/392/. Some are never given reasons as to why they were pulled over. *Id.* at 10. Numerous abuses at these traffic stops have been documented, including instances where police officers did not inform individuals of their rights, asked an individual to sign immigration papers without an explanation of the documents, and searched an individual's cars without permission. *Id.* at 12-14.

18. Reports of racial profiling at police roadblocks have increased as well. Georgia police choose to set up checkpoints on specific roads and stop certain

drivers to ask for information. Latinos feel that they are being targeted for immigration purposes at these roadblocks. *See* Mariann Martin & Perla Trevize, *Hispanics Say They are Being Targeted at Police Checkpoints*, Times Free Press (June 2, 2011), <http://www.timesfreepress.com/news/2011/jun/02/roadblocks-raise-eyebrows/>. In Whitfield County, for instance, most of the 32 traffic roadblocks set up by Dalton police in 2011 were located in neighborhoods with large Latino populations or at entrances of carpet factories where many Latinos work. *Id.* At these roadblocks, approximately 22 percent of tickets were issued for driving without a license, an offense that in Georgia requires arrest and, by extension, the examination of immigration status. *Id.* Nevertheless, a Whitfield county police spokesperson said he did not have information on how many Latinos and immigrants were cited at the roadblocks. *Id.* In May of 2012, in Fayetteville, Georgia, concerned community members set up a meeting with the Fairburn police chief to push for an end to police checkpoints. Press Release, National Day Laborer Organizing Network, *Unnecessary Roadblocks Prompt Fayetteville Community Meeting with Fairburn Police Chief* (May 11, 2012), *available at* <http://ndlon.org/en/pressroom/press-releases/item/495-unnecessary-roadblocks-prompt-fayetteville-community-meeting-with-fairburn-police-chief/495-unnecessary-roadblocks-prompt-fayetteville-community-meeting-with-fairburn-police-chief>.

19. There have been reports that Georgia police even target crime victims and witnesses for deportation, making immigrants reluctant to cooperate with law enforcement. In Cobb County, Latinos who have experienced racial profiling fear reporting crimes to the police. According to testimonials, trust between the community and police has significantly diminished as a result of 287(g) enforcement. *See, e.g.,* ACLU of Georgia, *Terror and Isolation in Cobb County: How Unchecked Police Power Under 287(g) has Torn Families Apart and Threatened Public Safety* (Oct. 2009), available at http://www.acluga.org/download_file/view_inline/1505/392/; *New law spawns mistrust of police by Hispanics*, Merrillville Post-Tribune (July 30, 2007). In one extreme case, a woman feared reporting a kitchen fire in her home after her husband was detained and questioned for several hours due to a car accident. ACLU of Georgia, *Terror and Isolation in Cobb County: How Unchecked Police Power Under 287(g) has Torn Families Apart and Threatened Public Safety* 12 (Oct. 2009). Such fears only stand to deepen in wake of the recent implementation of Georgia's "show me your papers" provision. *See* Jeremy Redmon, *Alabama's 'show me your papers' law: a cautionary take for Georgia*, The Atlanta Journal Constitution (Aug. 20, 2012), <http://www.ajc.com/news/news/alabamas-show-me-your-papers-law-a-cautionary-tale/nSCXw/> (discussing how a similar Alabama law led to immigrants' reluctance to report crimes).

Information Desperately Needed to Assess Extent of These Issues

20. Reports of racial discrimination have emerged in other locales where police have strong ties to ICE. Yet, documenting constitutionally deficient *patterns* of discrimination and realizing effective monitoring have required access to information. For instance, a Department of Justice (“DOJ”) investigation into the Sheriff’s Office in Alamance County, North Carolina, decried the way in which the County “persistently delayed providing important information” on its policing practices. Letter from Civil Rights Division, Department of Justice, to Clyde B. Albright, County Att’y, Alamance County, at 1 (Sept. 18, 2012), *available at* <http://www.justice.gov/iso/opa/resources/171201291812462488198.pdf>. Only after having “gathered sufficient information” was the DOJ able to conclude that the Sheriff’s Office “engages in a pattern or practice of discriminatory policing against Latinos.” *Id.* at 2. One of the DOJ’s principle findings relied upon a significant swath of statistical data, which revealed that sheriff deputies were “four to ten times more likely to stop Latino drivers than non-Latino drivers.” *Id.* at 4. The DOJ also was able to demonstrate that the Sheriff “selects, and encourages his officers to select, predominately Latino neighborhoods to set up vehicle checkpoints.” *Id.* A separate DOJ investigation into the Sheriff’s Office in Maricopa, Arizona, also identified a pattern of racial profiling and unlawful stops of Latinos. Letter from

Civil Rights Division, Department of Justice, to Bill Montgomery, County Att’y, Maricopa County, at 2 (Dec. 15, 2011), *available at* http://www.justice.gov/crt/about/spl/documents/mcso_findletter_12-15-11.pdf. The investigation relied on tens of thousands of pages of documents—documents that the DOJ was only able to obtain after filing a lawsuit demanding their release. *Id.* at 1 & n.1. Both investigations resulted in cancellation of the counties’ 287(g) agreements. Michael Biesecker, “Federal report on Alamance sheriff could trigger lawsuit,” *Charlotte Observer* (Sept. 25, 2012), <http://www.charlotteobserver.com/2012/09/23/3551449/feds-report-on-nc-sheriff-could.html>; Press Release, Department of Homeland Security, Statement by Secretary Napolitano on DOJ’s Findings of Discriminatory Policing in Maricopa County (Dec. 15, 2011), *available at* <http://www.dhs.gov/news/2011/12/15/secretary-napolitano-dojs-findings-discriminatory-policing-maricopa-county>.

21. While anecdotal evidence of such discrimination abounds, the exact nature of the impact of Georgia police involvement in immigration enforcement is unclear. Thousands of individuals have been deported after an arrest by Georgia state or local police. Yet, no one knows the reason such individuals came into contact with law enforcement in the first place; the grounds for their ultimate arrest; and the countries and cities from which transfers to ICE are being made. It

is also unknown whether there has been any communication between state officials and the federal government regarding the widespread reports of discriminatory immigration enforcement in Georgia. Information requested through this action will shed light on these important matters and ensure transparency to the public.

22. Without such information, it is unclear how any member of the public can participate meaningfully in the “widespread public debate on the . . . issue of whether and to what extent local police should be involved with federal immigration enforcement efforts.” *Hernandez v. U.S. Customs and Border Protection Agency*, 2012 WL 398328, at *9 (E.D. La. Feb. 7, 2012); *see also Bd. of Educ., Island Trees Union Free Sch. Dist. v. Pico*, 457 U.S. 853, 868 (1982) (“[A]ccess to ideas makes it possible for citizens generally to exercise their rights of free speech and press in a meaningful manner[.]”); *Saxbe v. Washington Post Co.*, 417 U.S. 843, 862-63 (1974) (Powell, J., dissenting) (“[P]ublic debate must not only be unfettered; it must also be informed.”). Indeed, the information sought here would fulfill the “basic purpose of FOIA,” namely “to ensure an informed citizenry, vital to the functioning of a democratic society . . . [and] to hold the governors accountable to the governed.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).

23. Immigration-related activities take up an increasing amount of time and resources of Georgia law enforcement. Despite being an issue of national salience, Georgia's ever-deepening involvement in immigration enforcement has not been accompanied by greater information on the impact of such involvement. The information sought through this action will enable urgently needed public oversight of Georgia-federal immigration cooperation.

Plaintiffs' FOIA Request

24. On April 17, 2012, following a significant rise in reports of immigration-related police abuses, Plaintiffs submitted a FOIA request for records of individuals transferred to ICE following arrest by Georgia state and local law enforcement officials; certain statistics regarding said individuals; communications between ICE and Georgia state and local law enforcement officials on certain topics related to immigration enforcement; and records of immigration detainers placed on individuals in Georgia state or local custody. None of this information is presently in the public domain. Plaintiffs plan to examine and widely report on this information. Plaintiffs requested "expedited processing" under 5 U.S.C. § 552(a)(6)(E)(i) and a fee waiver pursuant to both 5 U.S.C. § 552(a)(4)(A)(iii) (public interest waiver) and 6 C.F.R. § 5.11(d)(1) (news media waiver)(2003). A copy of Plaintiffs' request is attached to this complaint as Exhibit A.

25. By letter dated April 23, 2012, DHS/ICE acknowledged receipt of Plaintiffs request and denied Plaintiffs' request for expedited processing and a fee waiver. A copy of the April 23 letter is attached as Exhibit B.

26. By letter dated May 25, 2012, DHS/ICE informed Plaintiffs that the total search and duplication expenses for processing their request would exceed the \$25 threshold at which the government must notify the requestor prior to taking further action. DHS/ICE requested confirmation in writing within 15 business days of the amount Plaintiffs were willing to pay. A copy of the May 25 letter is attached as Exhibit C.

27. On June 11, 2012, Plaintiffs informed DHS/ICE that they planned to appeal ICE's denial of a fee waiver, and would submit their appeal within 60 days of the April 23, 2012 denial. A copy of Plaintiffs' June 11, 2012 letter is attached as Exhibit D.

28. On June 18, 2012, Plaintiffs submitted to DHS/ICE an appeal of ICE's denial of a fee waiver and expedited processing for their request. Plaintiffs reasserted their arguments that they met all requirements for a public interest fee waiver under 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k)(1)(2003); they qualified for a news media fee waiver under 6 C.F.R. § 5.11(d)(1)(2003); and they were

entitled to expedited processing under 5 U.S.C. 552(a)(6)(E)(v)(II) and 6 C.F.R. § 5.5(d)(1)(2003). A copy of Plaintiffs' appeal is attached as Exhibit E.

29. By letter dated June 22, 2012, DHS/ICE acknowledged receipt of Plaintiffs' appeal on June 21, 2012.

30. By letter dated September 25, 2012, DHS/ICE denied Plaintiffs' appeal of the fee waiver and expedited processing decisions. DHS/ICE declined to address the arguments regarding the news media fee waiver contained in Plaintiffs' June 18 appeal letter. A copy of the denial is attached as Exhibit F.

31. DHS/ICE has rendered no substantive decision regarding the records requested by Plaintiffs.

32. Plaintiffs have exhausted administrative remedies against DHS/ICE and seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B).

FIRST CLAIM FOR RELIEF

Violation of FOIA for Failure to Disclose Records Responsive to

Plaintiffs' Request

33. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 32 as if repeated and incorporated herein.

34. By failing to adequately search for, disclose and release the requested records, Defendants have violated Plaintiffs' rights to agency records under 5 U.S.C. § 552.

SECOND CLAIM FOR RELIEF

Defendants Improperly Denied Plaintiffs' Requests for Expedited Processing

35. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 32 as if repeated and incorporated herein.

36. Defendants have violated Plaintiffs' rights to expedited processing under 5 U.S.C. §552(a)(6)(E) and Defendants' own regulations, 6 C.F.R. § 5.5(d)(2003).

THIRD CLAIM FOR RELIEF

Defendants Improperly Denied Plaintiffs Request for a Fee Waiver

37. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 32 as if repeated and incorporated herein.

38. Defendants have violated Plaintiffs' rights to a fee waiver under 5 U.S.C. § 552(a)(4)(A)(iii) and Defendants' own regulations, 6 C.F.R. § 5.11(k)(2003).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request that this court:

1. Assume jurisdiction over this matter;
2. Order Defendants to immediately make a full, adequate, and expedited search for the requested records;
3. Order Defendants to make the requested records available to Plaintiffs forthwith;
4. Enjoin Defendants from assessing fees or costs for the processing of Plaintiffs' request;
5. Award Plaintiffs their costs and reasonable attorneys' fees, as provided by 5 U.S.C. § 552(a)(4)(E);
6. Grant such other relief as this Court may deem just and proper.

Dated: October 24, 2012

Respectfully submitted,[±]

s/
Azadeh N. Shahshahani
Georgia Bar No. 509008
Attorney for GLAHR and ACLU of
Georgia
ACLU OF GEORGIA
1900 The Exchange, Suite 425
Atlanta, Georgia 30339
Telephone: (770) 303-8111
Email: ashahshahani@acluga.org

On behalf of Attorneys for Plaintiffs

Chara Fisher Jackson (GSB No. 386101)
Azadeh N. Shahshahani (GSB No. 509008)
ACLU OF GEORGIA
1900 The Exchange, Suite 425
Atlanta, GA 30339
Telephone: (770) 303-8111
Facsimile: (770) 303-0060
Email: cfjackson@acluga.org
Email: ashahshahani@acluga.org

Alina Das*
Matthew Craig, Legal Intern
Amy Pont, Legal Intern
WASHINGTON SQUARE LEGAL
SERVICES
Immigrant Rights Clinic
245 Sullivan Street, 5th Floor
New York, NY 10012
Telephone: (212) 998-6430
Facsimile: (212) 995-4031
Email: DasA@exchange.law.nyu.edu

Jessica Karp*
NATIONAL DAY LABORER
ORGANIZING NETWORK
675 S. Park View St., Suite B
Los Angeles, CA 90057
Telephone: (213) 380-2783
Facsimile: (213) 380-2787
Email: jkarp@ndlon.org

Attorneys for Plaintiffs

[±] Counsel certifies this document has been prepared in accordance with L.R. 5.1.

* Application for admission *pro hac vice* forthcoming